

BEFORE THE  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER DISABILITY  
DECISION NO. 61 AS A PRECEDENT  
DECISION PURSUANT TO SECTION  
409 OF THE UNEMPLOYMENT  
INSURANCE CODE

In the Matter of:

PRECEDENT  
DISABILITY DECISION  
No. P-D-388

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| FORMERLY<br>DISABILITY DECISION<br>No. 61 |
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The above-named claimant on May 26, 1947, appealed to a Referee (Case No. SF-DI-116) from a determination of the Department of Employment which held that he was ineligible for disability insurance benefits beginning March 30, 1947, under Section 206 of the Unemployment Insurance Act [now section 2627 of the Unemployment Insurance Code]. Subsequent to the issuance of the Referee's decision, the California Unemployment Insurance Appeals Board on October 2, 1947, set aside the decision of the Referee under the provisions of Section 72 of the Act [now section 412 of the Unemployment Insurance Code].

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

The claimant was last employed as a janitor by an automobile association in San Francisco. He left his work on February 22, 1947, because of an illness diagnosed as a contracted bladder neck requiring surgery. He returned to work on June 3, 1947.

On March 17, 1947, the claimant filed a claim for disability insurance benefits in the San Francisco office

of the Department of Employment. The claim was backdated to February 23, 1947, and benefits were paid until March 30, 1947. On May 23, 1947, the Department issued a determination which held the claimant ineligible for benefits for an indefinite period beginning March 30, 1947, on the ground that he was not disabled within the meaning of Section 206 of the Unemployment Insurance Act [now section 2627 of the Unemployment Insurance Code]. The claimant appealed to a Referee who reversed the determination of the Department. Thereafter the Appeals Board set aside the decision of the Referee under the provisions of Section 72 of the Act [now section 412 of the Unemployment Insurance Code].

The claimant was first examined for his illness on January 21, 1947, by physicians at a hospital clinic. He was a patient in the hospital from February 23 to March 2, and from March 9 to March 15, 1947. Thereafter he returned to the clinic for examinations several times, including an examination on May 16, 1947.

The physician's certificate, which the claimant submitted in support of his claim, was signed by a member of the hospital staff and stated that the claimant had been disabled but that he was able to return to work as of March 31, 1947, the date of the certificate. The same physician reported again on or about April 24, 1947, that the claimant was able to work at that time. Subsequent reports from the physicians at the same hospital indicated that the claimant was examined again on May 16, 1947, and that he should be able to carry on his usual duties as a janitor. Another report from the hospital, signed by a member of the urology staff on May 20, 1947, stated that no complications had developed in the claimant's case, and "we can see no reason why he cannot return to work."

On May 12, 1947, the claimant was examined by a physician who was not on the hospital staff, and who certified that the claimant "has had a urological operation done at the...hospital and he is not fully recovered yet and unable to work." The physician estimated that the claimant would be able to return to work on June 3, 1947.

The claimant testified at the hearing before the Referee that he was unable to work in his usual occupation as a janitor prior to June 3, 1947, because his

duties as a janitor involved walking, which caused pain in his side, and might lead to infection.

#### REASON FOR DECISION

Section 206 of the Act [now section 2627 of the Unemployment Insurance Code] requires, as a condition of eligibility for disability benefits, that an individual be disabled. Section 201 of the Act [now section 2626 of the Unemployment Insurance Code] provides in part that an individual shall be deemed disabled in any week in which, because of his physical or mental condition, he is unable to perform his regular or customary work. The evidence is clear that the claimant was disabled until March 30, 1947, but there is a conflict in the evidence concerning disability after that date.

In previous decisions concerning the date of termination of disability we have pointed out that lay testimony as well as medical testimony is admissible, and that the issue is to be decided by weighing all of the evidence. (See Disability Decision No. D-34-15). The Referee's decision which we set aside in the instant case awarded benefits to the claimant on the theory that "there can be no better evidence of the presence of pain than the statements of the claimant." To the extent that the quoted statement implies that the claimant's testimony as to disability must be given greater weight than the medical evidence, we expressly disapprove the statement. It is our view that the facts of continuance and termination of disability are to be determined by weighing all of the evidence, both lay and medical, and not by the application of rules which assign greater or lesser weight to particular types of evidence.

In the instant case, the physicians who had examined and treated the patient for several months reported that the claimant was able to resume his work as of March 31, 1947. Subsequent examinations and reports by the same physicians confirmed the original report. Although there is evidence, both lay and medical, to the contrary, it is our view that, considering all of the evidence, the claimant was able to resume his regular and customary work as of March 31, 1947, and was not disabled on and after that date within the meaning of Section 201 of the Act [now section 2626 of the Unemployment Insurance Code]. Therefore he was not eligible for disability benefits under Section 206 of the Act [now section 2627 of the

Unemployment Insurance Code<sup>7</sup> for the period involved in this appeal.

DECISION

The determination of the Department is affirmed.  
Benefits are denied.

Sacramento, California, October 31, 1947.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

TOLAND C. McGETTIGAN, Chairman

MICHAEL B. KUNZ

HIRAM W. JOHNSON, 3rd

Pursuant to section 409 of the Unemployment Insurance Code, the above Disability Decision No. 61 is hereby designated as Precedent Decision No. P-D-388.

Sacramento, California, May 2, 1978.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

HARRY K. GRAFE

RICHARD H. MARRIOTT

HERBERT RHODES